

STATE PERSONNEL BOARD CALENDAR



DECEMBER 20, 2005

SACRAMENTO, CALIFORNIA

State of California

Memorandum

DATE: December 9, 2005

TO: ALL INTERESTED PARTIES

FROM: STATE PERSONNEL BOARD – Executive Division

SUBJECT: Notice and Agenda for the **December 20, 2005**, meeting of the State Personnel Board.

PLEASE TAKE NOTICE that on December 20, 2005, at the offices of the State Personnel Board, located at 801 Capitol Mall, Room 150, Sacramento, California, the State Personnel Board will hold its regularly scheduled meeting. Pursuant to Government Code section 11123, a teleconference location may be conducted for this meeting at 320 W. 4th Street, Los Angeles, California.

The attached Agenda provides a brief description of each item to be considered and lists the date and approximate time for discussion of the item.

Also noted is whether the item will be considered in closed or public session. Closed sessions are closed to members of the public. All discussions held in public sessions are open to those interested in attending. Interested members of the public who wish to address the Board on a public session item may request the opportunity to do so.

Should you wish to obtain a copy of any of the items considered in the public sessions for the December 20, 2005, meeting, please contact staff in the Secretariat's Office, State Personnel Board, 801 Capitol Mall, MS 22, Sacramento, California 95814 or by calling (916) 653-0429 or TDD (916) 654-2360, or the Internet at:

<http://www.spb.ca.gov/calendar.htm>

Should you have any questions regarding this Notice and Agenda, please contact staff in the Secretariat's Office at the address or telephone numbers above.



Pui Fong
Secretariat's Office

Attachment



CALIFORNIA STATE PERSONNEL BOARD MEETING¹

801 Capitol Mall
Sacramento, California

Public Session Location – 801 Capitol Mall
Sacramento, California, Room 150
Teleconference – 320 West 4th Street²
Los Angeles, California, Suite 620

Closed Session Location – 801 Capitol Mall
Sacramento, California, Room 141
Teleconference – 320 West 4th Street
Los Angeles, California Suite 620

MID MONTH MEETING – DECEMBER 20, 2005

¹ Sign Language Interpreter will be provided for Board Meeting upon request - contact Secretariat at (916) 653-0429, or CALNET 453-0429, TDD (916) 654-2360.

²Pursuant to Government Code section 11123, a teleconference location may be conducted for this meeting at 320 West 4th Street, Los Angeles, California.

MID MONTH MEETING AGENDA³

DECEMBER 20, 2005
10:00 a.m. – 1:30 p.m.
(or upon completion of business)

PLEASE NOTE: ALL TIMES ARE APPROXIMATE AND ARE SUBJECT TO CHANGE

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

(10:00 a.m. – 10:30 a.m.)

1. **ROLL CALL**
2. **REPORT OF THE EXECUTIVE OFFICER – Floyd D. Shimomura**
3. **REPORT OF THE CHIEF COUNSEL – Elise Rose**
4. **NEW BUSINESS**

Items may be raised by Board Members for scheduling and discussion for future meetings.

5. **REPORT ON LEGISLATION – Sherry Hicks**

The Board may be asked to adopt a position with respect to the bills listed on the legislation memorandum attached hereto.

CLOSED SESSION OF THE STATE PERSONNEL BOARD

(10:30 a.m. – 11:15 a.m.)

6. **DELIBERATION ON ADVERSE ACTIONS, DISCRIMINATION COMPLAINTS, AND OTHER PROPOSED DECISIONS SUBMITTED BY ADMINISTRATIVE LAW JUDGES**

Deliberations on matters submitted at prior hearing; on proposed, rejected, remanded, and submitted decisions; petitions for rehearing; and other matters related to cases heard by administrative law judges of the State Personnel Board or by the Board itself. [Government Code Sections 11126 (d), and 18653 (2).]

³ The Agenda for the Board can be obtained at the following internet address:
<http://www.spb.ca.gov/calendar.htm>

7. PENDING LITIGATION

Conference with legal counsel to confer with and receive advice regarding pending litigation when discussion in open session would be prejudicial.
[Government Code sections 11126(e)(1) and 18653.]

State Personnel Board v. Department of Personnel Administration,
California Supreme Court Case No. S119498.

State Personnel Board v. California State Employees Association,
California Supreme Court Case No. S122058.

Connerly v. State Personnel Board, California Supreme Court,
Case No. S125502.

International Union of Operating Engineers v. State Personnel Board,
Public Employment Relations Board (PERB) Case No. SA-CE-1295-S.

State Compensation Ins. Fund v. State Personnel Board/CSEA,
Sacramento Superior Court No. 04CS00049.

SEIU Local 1000 (CSEA) v. State Personnel Board,
Sacramento Superior Court No. 05CS00374.

The Copley Press, Inc. v. San Diego Superior Court,
California Supreme Court No. S128603.

Union of American Physicians and Dentists v. Department of Corrections, et al.,
United States District Court, Northern District of California.

8. RECOMMENDATIONS TO THE LEGISLATURE

Deliberations on recommendations to the legislature.
[Government Code section 18653.]

9. RECOMMENDATIONS TO THE GOVERNOR

Deliberations on recommendations to the Governor.
[Government Code section 18653.]

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

(11:15 a.m. – 11:30 a.m.)

10. **DISCUSSION OF COMING BOARD MEETING SCHEDULE OF JANUARY 6, 2006, IN SACRAMENTO, CALIFORNIA**

BOARD ACTIONS:

11. **ADOPTION OF THE STATE PERSONNEL BOARD SUMMARY MINUTES OF NOVEMBER 15, 2005**
12. **EVIDENTIARY CASES** - (See Case Listings on Page 8-13)
13. **RESOLUTION EXTENDING TIME UNDER GOVERNMENT CODE SECTION 18671.1 EXTENSION** - (See Agenda Page 16-17)
14. **NON-EVIDENTIARY CASES** - (See Case Listings on Page 13-14)
15. **NON-HEARING CALENDAR**

Classification proposals are made to the State Personnel Board by either the Board staff or Department of Personnel Administration staff.

- A. **BOARD ITEMS PRESENTED BY STATE PERSONNEL BOARD OR DEPARTMENT OF PERSONNEL ADMINISTRATION TO ESTABLISH, REVISE OR ABOLISH CLASSIFICATIONS, ALTERNATE RANGE CRITERIA, ETC.**

NONE

- B. **ABOLISHMENT OF CLASSES THAT HAVE HAD NO INCUMBENTS FOR MORE THAN TWO YEARS. DEPARTMENTS THAT UTILIZE THE CLASS AS WELL AS THE APPROPRIATE UNION CONCUR WITH THE ABOLISHMENT OF THESE CLASSES.**

NONE

16. **STAFF CALENDAR ITEMS FOR BOARD INFORMATION**

NONE

17. CAREER EXECUTIVE ASSIGNMENT (CEA) CATEGORY ACTIVITY

This section of the Agenda serves to inform interested individuals and departments of proposed and approved CEA position actions.

The first section lists position actions that have been proposed and are currently under consideration.

Any parties having concerns with the merits of a proposed CEA position action should submit their concerns in writing to the Classification and Compensation Division of the Department of Personnel Administration, the Merit Employment and Technical Resources Division of the State Personnel Board, and the department proposing the action.

To assure adequate time to consider objections to a CEA position action, issues should be presented immediately upon receipt of the State Personnel Board Agenda in which the proposed position action is noticed as being under consideration, and generally no later than a week to ten days after its publication.

In cases where a merit issue has been raised regarding a proposed CEA position action and the dispute cannot be resolved, a hearing before the five-member Board may be scheduled. If no merit issues are raised regarding a proposed CEA position action, and it is approved by the State Personnel Board, the action becomes effective without further action by the Board.

The second section of this portion of the Agenda reports those position actions that have been approved. They are effective as of the date they were approved by the Executive Officer of the State Personnel Board.

A. REQUESTS TO ESTABLISH NEW OR REVISE EXISTING CEA POSITIONS CURRENTLY UNDER CONSIDERATION

DEPUTY DIRECTOR, MEMBER OFFICES DIVISION

The Legislative Counsel Bureau proposes to reallocate the existing CEA allocation titled Deputy Director, Legislative Data Center Customer Services Division to the above- mentioned position. The Deputy Director, Member Offices Division will be responsible for providing information technology products and services to meet the needs of the member Capitol and district offices of the California Legislature.

B. EXECUTIVE OFFICER DECISIONS REGARDING REQUESTS TO ESTABLISH NEW OR REVISE EXISTING CEA POSITIONS

NONE

18. EMPLOYEE APPOINTMENTS, DISCIPLINARY MATTERS, & OTHER APPEALS

Deliberations to consider matter submitted at prior hearing. [Government Code sections 11126(d), 18653.]

19. WRITTEN STAFF REPORT FOR BOARD INFORMATION

NONE

20. PRESENTATION OF EMERGENCY ITEMS AS NECESSARY

21. BOARD ACTIONS ON SUBMITTED ITEMS - (See Agenda - Page 15)

These items have been taken under submission by the State Personnel Board at a prior meeting and may be before the Board for a vote at this meeting. This list does not include evidentiary cases, as those cases are listed separately by category on this agenda under Evidentiary Cases.

LUNCH

(11:30 a.m. – 1:00 p.m.)

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

(1:00 p.m. – 4:30 p.m.)

22. SEXUAL HARRASSMENT PREVENTION TRAINING

A D J O U R N M E N T

12. EVIDENTIARY CASES

The Board Administrative Law Judges conduct evidentiary hearings in appeals that include, but are not limited to, adverse actions, medical terminations, demotions, discrimination, reasonable accommodations, and whistleblower complaints.

A. BOARD CASES SUBMITTED

These items have been taken under submission by the State Personnel Board at a prior meeting. Cases that are before the Board for vote will be provided under separate cover.

(1) **GARY GARFINKEL, CASE NO. 98-3128RBA**

Appeal for determination of back salary, benefits and interest

Classification: Deputy Attorney General IV

Department: Department of Justice

Proposed decision rejected July 13, 2005

Transcript prepare

Pending oral argument October 3, 2005, Sacramento

Oral argument continued

Oral argument heard November 1, 2005, San Diego

Case ready for decision by FULL Board

B. CASES PENDING

ORAL ARGUMENTS

These cases are on calendar to be argued at this meeting or to be considered by the Board in closed session based on written arguments submitted by the parties.

NONE

C. CHIEF COUNSEL RESOLUTIONS

NONE

COURT REMANDS

This case has been remanded to the Board by the court for further Board action.

NONE

STIPULATIONS

These stipulations have been submitted to the Board for Board approval, pursuant to Government Code, section 18681.

NONE

D. ADMINISTRATIVE LAW JUDGE'S (ALJ) PROPOSED DECISIONS

PROPOSED DECISIONS

These are ALJ proposed decisions submitted to the Board for the first time.

- (1) SUE BEECK, CASE NO. 04-0511E**
Appeal from discrimination and retaliation
Classification: Academic Instructor
Department: Department of Corrections
- (2) SENWEE BRADLEY, CASE NO. 05-3114**
Appeal from rejection during probationary period/dismissal
Classification: Accounting Technician II
Department: California State University Channel Islands, Camarillo
- (3) ROBERT BURKS, CASE NO. 05-1739**
Appeal from constructive medical termination
Classification: Officer, CHP
Department: Department of California Highway Patrol
- (4) SHAMARIE CONLEY, CASE NO. 05-2029**
Appeal from five percent reduction in salary for six months
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
- (5) RONALD FRANKLYN, CASE NO. 05-2105**
Appeal from 20 working days suspension
Classification: Officer, CHP
Department: Department of California Highway Patrol
- (6) MATHEW GERDES, CASE NO. 05-2008**
Appeal from five percent reduction in salary for 15 months
Classification: Correctional Officer
Department: Department of Corrections

- (7) **LEE KENDRICK, III, CASE NO. 04-1620**
Appeal from dismissal
Classification: Transportation Surveyor, CT
Department: Department of Transportation
- (8) **RICK LINSON, CASE NO. 04-2750**
Appeal from demotion
Classification: Captain, CHP
Department: Department of California Highway Patrol
- (9) **GILBERT E. MONTALVO, CASE NO. 05-2429**
Appeal from three workdays suspension
Classification: Workers' Compensation Claims Adjuster
Department: State Compensation Insurance Fund
- (10) **SOURIS NISHI, CASE NO. 05-0944**
Appeal from rejection during probation
Classification: Office Technician (Typing)
Department: Department of General Services
- (11) **KERRI POST, CASE NO. 05-0471**
WAYNE BERNARD, CASE NO. 04-2994
Appeals from 15 days suspension and dismissal
Classification: Officer, CHP
Department: Department of California Highway Patrol
- (12) **JAMES SHIPMAN, CASE NOS. 04-0129 & 05-0073E**
Appeal from 30 calendar days' suspension and whistleblower retaliation complaint
Classification: Correctional Counselor I
Department: Department of Corrections and Rehabilitation
- (13) **GORDON SMITH, CASE NO. 05-2182**
Appeal from rejection during probation
Classification: Caltrans Equipment Operator II
Department: Department of Transportation
- (14) **RICHARD WALL, CASE NO. 05-2762**
Appeal from medical separation and disability discrimination
Classification: Firefighter Crew Chief
Department: Military Department
- (15) **JOSEPH WILMES, CASE NO. 05-2460**
Appeal from rejection during probation
Classification: Program Representative I
Department: Department of Consumer Affairs

(16) DEVON YOUNG, CASE NO. 04-2383

Appeal from five working days suspension

Classification: Public Safety Dispatcher II

Department: Department of California Highway Patrol

Proposed Decisions Taken Under Submission At Prior Meeting

These are ALJ proposed decisions taken under submission at a prior Board meeting, for lack of majority vote or other reason.

NONE

PROPOSED DECISIONS AFTER BOARD REMAND

NONE

PROPOSED DECISIONS AFTER SPB ARBITRATION

NONE

E. PETITIONS FOR REHEARING

ALJ PROPOSED DECISIONS ADOPTED BY THE BOARD

The Board will vote to grant or deny a petition for rehearing filed by one or both parties, regarding a case already decided by the Board.

- (1) **DELWIN BROWN, CASE NO. 04-1665RP**
MARCEL BERRY, CASE NO. 04-1667RP
STEVE CHIU, CASE NO. 04-1773RP
LINDA BERSHELL-BRIDGES, CASE NO. 04-1777RP
ROBERT DUTRA, CASE NO. 04-1800RP
DANIEL TORRES, CASE NO. 04-1714RP
Appeal from dismissals
Classification: Youth Correctional Officer, Youth Correctional Counselor and Senior Youth Correctional Counselor
Department: Department of the Youth Authority
- (2) **JERALD ELLIOTT, CASE NO. 00-3394PA**
Appeal from dismissal
Classification: Information Technology Consultant
Department: California State University, San Diego
- (3) **JOHN GARZA, CASE NO. 05-1328P**
Appeal from official reprimand
Classification: Correctional Lieutenant
Department: Department of Corrections
- (4) **JUDY GUERRERO, CASE NO. 05-0292EP**
Appeal from denial of discrimination complaint
Classification: Labor Relations Manager II
Department: Department of Forestry and Fire Protection

WHISTLEBLOWER NOTICE OF FINDINGS

The Board will vote to grant or deny a petition for rehearing filed by one or both parties, regarding a Notice of Findings issued by the Executive Officer under Government Code, section 19682 et seq. and Title 2, California Code of Regulations, section 56 et seq.

NONE

F. PENDING BOARD REVIEW

These cases are pending preparation of transcripts, briefs, or the setting of oral argument before the Board.

(1) EDUARDO PEREZ, CASE NO. 05-0763A

Appeal from five percent reduction in salary for six months

Classification: Parole Agent I (Adult Parole)

Department: Department of Corrections

Proposed decision rejected November 1, 2005

Pending transcript

14. NON-EVIDENTIARY CASES

A. WITHHOLD APPEALS

Cases heard by a Staff Hearing Officer, a managerial staff member of the State Personnel Board or investigated by Appeals Division staff. The Board will be presented recommendations by a Staff Hearing Officer or Appeals Division staff for final decision on each appeal.

WITHHOLD FROM CERTIFICATION
CASES HEARD BY A STAFF HEARING OFFICER

NONE

WITHHOLD FROM CERTIFICATION
CASES NOT HEARD BY A STAFF HEARING OFFICER

NONE

B. MEDICAL AND PSYCHOLOGICAL SCREENING APPEALS

Cases heard by a Staff Hearing Panel comprised of a managerial staff member of the State Personnel Board and a medical professional. The Board will be presented recommendations by a Hearing Panel on each appeal.

NONE

**C. EXAMINATION APPEALS
MINIMUM QUALIFICATIONS
MERIT ISSUE COMPLAINTS**

Cases heard by a Staff Hearing Officer, a managerial staff member of the State Personnel Board or investigated by Appeals Division staff. The Board will be presented recommendations by a Staff Hearing Officer or Appeals Division staff for final decision on each appeal.

EXAMINATION APPEALS

NONE

MINIMUM QUALIFICATIONS

NONE

MERIT ISSUE COMPLAINTS

NONE

**D. RULE 211 APPEALS
RULE 212 OUT OF CLASS APPEALS
VOIDED APPOINTMENT APPEALS**

Cases heard by a Staff Hearing Officer, or a managerial staff member of the State Personnel Board. The Board will be presented recommendations by a Staff Hearing Officer for final decision on each appeal.

NONE

E. REQUEST TO FILE CHARGES CASES

Investigated by Appeals Division staff. The Board will be presented recommendations by Appeals Division staff for final decision on each request.

NONE

PETITIONS FOR REHEARING CASES

- (1) PENNY TAYLOR, CASE NO. 04-2877P**
Classification: Public Safety Dispatcher II
Department: California Highway Patrol
Issue: Whether SPB erred in upholding the withhold taken by the CHP.

SUBMITTED

1. TEACHER STATE HOSPITAL (SEVERELY), ETC.

Departments of Mental Health and Developmental Services. (Hearing held December 3, 2002.)

2. VOCATIONAL INSTRUCTOR (SAFETY)(VARIOUS SPECIALTIES)

Departments of Mental Health and Developmental Services. (Hearing held December 3, 2002.)

3. TELEVISION SPECIALIST (SAFETY)

The Department of Corrections proposes to establish the new classification Television Specialist (Safety) by using the existing Television Specialist class specification and adding "Safety" as a parenthetical to recognize the public aspect of their job, additional language will be added to the Typical Tasks section of the class specification and a Special Physical Characteristics section will be added. (Presented to Board March 4, 2003.)

4. HEARING – Personal Services Contract #04-03

Appeal of the California State Employees Association from the Executive Officer's April 15, 2004, Approval of Master Contracts between the California Department of Corrections and Staffing Solutions, CliniStaff, Inc., Staff USA, Inc., CareerStaff Unlimited, MSI International, Inc., Access Medical Staffing & Service, Drug Consultants, Infinity Quality Services Corporation, Licensed Medical Staffing, Inc., Morgan Management Services, Inc., Asereth Medical Services, and PrideStaff dba Rx Relief. (Hearing held August 12, 2004.)

5. HEARING

Proposed new and revised State Personnel Board Regulations effecting equal opportunity, discrimination complaints and reasonable accommodation policies and procedures. (Hearing held July 7, 2004.)

6. GARY GARFINKEL, CASE NO. 98-3128RBA

Appeal for determination of back salary, benefits and interest. Deputy Attorney General IV. Department of Justice (Hearing held November 1, 2005)

NOTICE OF GOVERNMENT CODE SECTION 18671.1 RESOLUTION

Since Government Code section 18671.1 requires that cases pending before State Personnel Board Administrative Law Judges (ALJ's) be completed within six months or no later than 90 days after submission of a case, whichever is first, absent the publication of substantial reasons for needing an additional 45 days, the Board hereby publishes its substantial reasons for the need for the 45-day extension for some of the cases now pending before it for decision.

An additional 45 days may be required in cases that require multiple days of hearings, that have been delayed by unusual circumstances, or that involve any delay generated by either party (including, but not limited to, submission of written briefs, requests for settlement conferences, continuances, discovery disputes, pre-hearing motions). In such cases, six months may be inadequate for the ALJ to hear the entire case, prepare a proposed decision containing the detailed factual and legal analysis required by law, and for the State Personnel Board to review the decision and adopt, modify or reject the proposed decision within the time limitations of the statute.

Therefore, at its next meeting, the Board will issue the attached resolution extending the time limitation by 45 days for all cases that meet the above criteria, and that have been before the Board for less than six months as of the date of the Board meeting.

GOVERNMENT CODE SECTION 18671.1 RESOLUTION

WHEREAS, Section 18671.1 provides that, absent waiver by the appellant, the time period in which the Board must render its decision on a petition pending before it shall not exceed six months from the date the petition was filed or 90 days from the date of submission; and

WHEREAS, Section 18671.1 also provides for an extension of the time limitations by 45 additional days if the Board publishes substantial reasons for the need for the extension in its calendar prior to the conclusion of the six-month period; and

WHEREAS, the Agenda for the instant Board meeting included an item titled "Notice of Government Code section 18671.1 Resolution" which sets forth substantial reasons for utilizing that 45-day extension to extend the time to decide particular cases pending before the Board;

WHEREAS, there are currently pending before the Board cases that have required multiple days of hearing and/or that have been delayed by unusual circumstances or by acts or omissions of the parties themselves;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the time limitations set forth in Government Code section 18671.1 are hereby extended an additional 45 days for all cases that have required multiple days of hearing or that have been delayed by acts or omissions of the parties or by unusual circumstances and that have been pending before the Board for less than six months as of the date this resolution is adopted.

* * * * *



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(Cal. 12/20/05;)

TO: Members
State Personnel Board

FROM: State Personnel Board - Legislative Office

SUBJECT: LEGISLATION

There is no written legislative report at this time. I will give a verbal presentation on any legislative action that has taken place that will be of interest to the Board.

Please contact me directly should you have any questions or comments regarding any bills that you may have an interest in. I can be reached at (916) 653-0453.


Sherry Hicks
Director of Legislation

STATE PERSONNEL BOARD

NON-HEARING CALENDAR

RE: BOARD DATE DECEMBER 20, 2005

(Cal. 12/20/05;)

MEMO TO : STATE PERSONNEL BOARD

FROM : KAREN COFFEE, Chief, Merit Employment and
Technical Resources Division

SUBJECT : Non-Hearing Calendar Items for Board Action

The staff has evaluated these items and recommend the following actions be taken:

**A. BOARD ITEMS PRESENTED BY STATE PERSONNEL BOARD OR
DEPARTMENT OF PERSONNEL ADMINISTRATION TO ESTABLISH,
REVISE OR ABOLISH CLASSIFICATIONS, ALTERNATE RANGE
CRITERIA, ETC.**

NONE

**B. ABOLISHMENT OF CLASSES THAT HAVE HAD NO INCUMBENTS
FOR MORE THAN TWO YEARS. DEPARTMENTS THAT UTILIZE THE
CLASS AS WELL AS THE APPROPRIATE UNION CONCUR WITH THE
ABOLISHMENT OF THESE CLASSES.**

NONE